BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHARON D. COLLINS	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,023,845
SPRINT CORPORATION	)	
Respondent	)	
AND	)	
	)	
AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA	)	
Insurance Carrier	)	

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh dated August 4, 2005. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined that claimant had suffered accidental injury arising out of and in the course of her employment and had just cause for not providing notice within ten days of the alleged accident as required by K.S.A. 44-520. The finding of just cause extended the notice time to 75 days. The ALJ determined that claimant had provided notice within the 75-day time limit.

Respondent was ordered to designate an authorized, qualified treating physician for claimant's ankle and knee injuries and to provide temporary total disability compensation.

ISSUES

(1) Did claimant suffer accidental injury arising out of and in the course of her employment?

(2) Did claimant provide timely notice of accident pursuant to K.S.A. 44-520? If claimant failed to provide timely notice, as required by the statute, did claimant have just cause sufficient to allow the extension of the notice date to 75 days beyond the date of accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds as follows:

Claimant alleges accidental injury on May 2, 2005, when, as she was leaving work, going through the parking lot of respondent's building, she twisted her ankle and, in attempting to stop herself from falling, hyperextended her knee. The injury was to claimant's left ankle and foot and her right knee. Claimant identified a witness by the name of Michael Anderson, who observed the accident and came to offer help. However, Mr. Anderson did not testify in this matter. Claimant went home that night. The next day, suffering additional difficulties, claimant called her aunt and uncle to take her to the emergency room at Saint Joseph Health Center. Claimant also telephoned her interim supervisor, Erinn Helphingstine. Unable to reach Ms. Helphingstine, claimant left a voice mail message on Ms. Helphingstine's telephone, advising her that she had suffered an injury. On direct examination, claimant testified that when she called Ms. Helphingstine, she stated the injury was at work. However, on cross-examination, claimant testified she was unable to remember her exact words. She was unable to state whether she specifically alleged a work-related injury.

Claimant was taken to Saint Joseph Health Center, at which time a general information sheet was prepared. This sheet,[1] dated May 3, 2005, indicates that claimant "fell down stairs @ job." Directly beneath the word "job" is a word which respondent's attorney determined to be "interview," but which both the ALJ and this Board Member have difficulty reading. The emergency room report,[2] also dated May 3, 2005, indicates that claimant "was going down some stair [sic] last night and apparently tripped and fell twisting her right knee and left foot." The typed report does not indicate whether the injury occurred at work or at any particular location.

Claimant testified she contacted Margaret Hastings, the human resources director, approximately ten days after the accident, but claimant was unable to identify the specific date that she contacted Ms. Hastings. When Ms. Helphingstine testified, she stated that she was first contacted by Ms. Hastings on approximately May 31, 2005. This was the first indication Ms. Helphingstine received from claimant of any type of job-related injury. Ms. Helphingstine testified that she and claimant conversed on several occasions, both through phone messages and phone conversations, regarding claimant's injured ankle, foot and knee. At no time before May 31, 2005, did claimant mention the injury was

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[1] P.H. Trans., Resp. Ex. A.

[2] P.H. Trans., Resp. Ex. A.

job-related. Claimant did not request medical care be provided by respondent. Claimant, however, proceeded with medical care through Robert P. Bruce, M.D., at the Kansas City Bone & Joint Clinic. Dr. Bruce first examined claimant on May 17, 2005, ultimately returning claimant to work on June 2, 2005. Dr. Bruce recommended physical therapy.

After the injury, claimant completed insurance forms to request short-term disability insurance. On the form,[3] the question is asked whether this is a work-related injury or illness. The form states "if yes, do not complete this form and immediately call Sprint's Claims Management" at a 1-800 number. The only available response to that question is "no," with the area for the "yes" answer blacked out. The "no" is not circled, but claimant acknowledged completing the form and signing and dating it at the bottom with the May 17, 2005 date. Claimant testified that she was unaware of her entitlement to workers compensation benefits. Claimant denied being provided workers compensation orientation at the time of her hire, but later on in her testimony at preliminary hearing acknowledged that she may have received workers compensation information, but testified that she did not read the information.[4] After claimant's request for short-term disability was denied (after a finding that claimant had untimely submitted the forms), claimant decided, after a conversation with Ms. Hastings, to pursue a workers compensation claim. The only indication as to the time claimant actually met with Ms. Hastings is associated with the May 31, 2005 contact from Ms. Hastings to Ms. Helphingstine. Claimant acknowledged that the short-term disability papers that she requested on May 3 did not arrive until after May 16, 2005. It was after the short-term disability was denied and after talking to Ms. Hastings that claimant determined that she would file a workers compensation claim.

Respondent acknowledges that they received notice of the accident on or about May 31, 2005, well beyond the ten-day limit set forth in K.S.A. 44-520.

At the time of claimant's first examination by Dr. Bruce, claimant gave a history of having suffered an injury to her right knee and left foot when she twisted her ankle while walking in the parking lot and she felt and heard a pop in her right knee. Again, there is no mention of the location of the parking lot. However, the Board notes that claimant's history of the injury, as associated with a parking lot, has been consistent throughout this litigation.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.[5]

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[3] P.H. Trans., Resp. Ex. A at 5.

[4] See P.H. Trans. at 28.

[5] K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

The general rule in Kansas is if an employee is injured while on his or her way to assume the duties of employment or after leaving such employment, the injuries are not considered to have arisen out of and in the course of employment.[6] This rule is known as the "going and coming" rule. Claimant acknowledges that she had clocked out prior to the time the accident occurred in respondent's parking lot. However, the only person to identify the location of the parking lot was claimant. She testified that the parking lot was part of Sprint's property. An exception to the "going and coming" rule applies where the employee is on the premises of the employer at the time of the injury. If that is the case, then the employee is not considered to be on his or her way to assume the duties of respondent or to have left such duties.[7] The term "premises" is narrowly construed to mean a place controlled by the employer or a place where the employee may reasonably be during the time he or she is doing what a person so employed may do while the employment is in progress.[8] The question whether the "going and coming" rule applies must be addressed on a case-by-case basis.[9]

The rationale for the "going and coming" rule, as explained in *Thompson*,[10] is that,

> . . . while on the way to or from the work the employee is subjected only to the same risks or hazards as those to which the general public is subjected. Thus, those risks are not causally related to the employment.[11]

In this instance, claimant identifies the parking lot as being Sprint's parking lot. There is no contradictory testimony with regard to that identification. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy.[12] The Board finds that claimant was in respondent's parking lot at the time the injury occurred and, therefore, the "going and coming" rule does not apply, as claimant was on respondent's premises. Additionally, there is no evidence to contradict claimant's testimony regarding the accident and how it occurred. The witness named by claimant did not testify. Therefore, the Board finds claimant did prove accidental injury arising out of and in the course of her employment.

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[6] K.S.A. 2004 Supp. 44-508(f).

[7] K.S.A. 2004 Supp. 44-508(f).

[8] *Chapman v. Victory Sand & Stone Co.*, 197 Kan. 377, 416 P.2d 754 (1966).

[9] *Chapman v. Beech Aircraft Corp.*, 20 Kan. App. 2d 962, 894 P.2d 901, aff'd 258 Kan. 653, 907 P.2d 828 (1995).

[10] *Thompson v. Law Offices of Alan Joseph*, 256 Kan. 36, 883 P.2d 768 (1994).

[11] *Id.* at 46.

[12] *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

K.S.A. 44-520 mandates that notice of accident be provided to the respondent within ten days of the accident. While claimant testified that she may have contacted Ms. Hastings within ten days, it is clear from the follow-up testimony of both claimant and Ms. Helphingstine that claimant's contact with Ms. Hastings actually occurred considerably later than ten days after the date of accident. The Board finds, pursuant to K.S.A. 44-520, that claimant has not provided notice of accident within the ten days mandated by the above statute.

K.S.A. 44-520, however, goes on to state that if a claimant establishes just cause for his or her failure to provide the notice within the ten days, then the time may be extended to 75 days from the date of accident.

Although not intended as an exhaustive list, some factors which may be considered in determining whether just cause exists are:

(1) The nature of the accident, including whether the accident occurred as a single, traumatic event or developed gradually.

(2) Whether the employee is aware he or she has sustained either an accident or an injury on the job.

(3) The nature and history of claimant's symptoms.

(4) Whether the employee is aware or should be aware of the requirements of reporting a work-related accident, and whether the respondent has posted notice as required by K.A.R. 51-12-2.[13]

In this instance, claimant acknowledges that the injury was a sudden and traumatic event, with claimant experiencing "a lot of pain."[14] Claimant testified that by the next day, she was in significant pain to the point where she called her aunt and uncle to transport her to the emergency room. While claimant testified that she contacted her interim supervisor, Ms. Helphingstine, she acknowledged on cross-examination that she was not sure exactly what she stated in the voice mail message that she left. Additionally, Ms. Helphingstine testified that she and claimant had several conversations regarding the injury over the next several days and, at no time, did claimant advise that she had suffered a work-related injury or provide any particulars of the accident.

Claimant testified that she was unaware of the rules regarding workers compensation. However, Ms. Helphingstine testified that at orientation, all new employees

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[13] *Russell v. MCI Business Services*, No. 201,706, 1995 WL 712402 (Kan. WCAB Oct. 9, 1995).

[14] P.H. Trans. at 8.

are taught to immediately report any work-related injuries to their supervisor or manager. Claimant acknowledged receiving information at orientation and testified that she did not read the information regarding workers compensation injuries.

In this instance, claimant was aware that she had suffered a traumatic accident while in respondent's parking lot, with almost an immediate need for medical care developing by the next day. While claimant denied being aware of the requirements of reporting an accident, claimant was provided specific information at orientation with regard to what actions should be taken if a work-related accident occurred. The fact that claimant failed or refused to read that information is regrettable, but does not belie the fact that claimant was provided specific instructions on what actions to take in the event of a work-related accident.

The Board finds, in this instance, that claimant failed to prove just cause for her failure to provide notice of accident in a timely fashion. Claimant had numerous opportunities over a several-week period to advise respondent of the particulars of the accident in order to provide respondent with notice of the events which resulted in the harm to claimant's ankle and knee. For whatever reason, claimant failed to do so. The Board finds that claimant has failed to prove that there was just cause for her failure to provide notice of accident within ten days. Therefore, the extension of the time limit within which to provide notice is not allowed under this case and the Award of the ALJ should be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh dated August 4, 2005, should be, and is hereby, reversed and benefits to claimant are denied.

IT IS SO ORDERED.

Dated this ____ day of November, 2005.

BOARD MEMBER

c: Kathleen J. Cossairt, Attorney for Claimant
Brian J. Fowler, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director